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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/892,300	06/26/2001	Manoel Tenorio	020431.0840	2345

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EXAMINER
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O'CONNOR, GERALD J

ART UNIT	PAPER NUMBER
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3627

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/20/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary****Application No.**

09/892,300

**Applicant(s)**

Tenorio

**Examiner**

O'Connor

**Art Unit**

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on December 29, 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) none is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on June 26, 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 29, 2006 has been entered.

### ***Preliminary Remarks***

2. PLEASE TAKE NOTICE that the examiner handling this application has changed. The new examiner is *Jerry O'Connor*. The Group Art Unit number is unchanged and is still 3627.
3. This Office action responds to the amendment and arguments filed by applicant on December 29, 2006 in reply to the previous Office action on the merits, mailed Sept. 28, 2006.
4. The amendment of claims 1, 12, 23, 34, and 35 by applicant in the reply filed on December 29, 2006 is hereby acknowledged.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

6. Claims 1-35 are rejected under 35 U.S.C. 102(e) as being anticipated by Herz et al. (US 2001/0014868).

With respect to **claim 1**, Herz et al. teaches determining customized prices and promotions and in particular *recording query information associated with a search query for a buyer of one or more databases containing product data* (e.g. see page 4, paragraph 33).

Note that collecting records of the information requested by a shopper, as taught by Herz represents recording query information associated with a search query for a buyer (shopper) of one or more databases containing product data. Additionally, note that Herz teaches the shopper requests information from (queries) an offer database (see page 3, paragraph 0022, lines 8-12).

The offer database of Herz represents one or more databases containing product information.

Lastly, note that Herz teaches the shopper's request for information (search query) may include the use of keywords (for example see page 4, paragraph 0036, lines 5-8 and page 26, paragraph 0258, lines 76-92).

With respect to **claim 1**, Herz further teaches *recording the presentation information associated with the manner in which a plurality of search results are presented to the buyer, each search result comprising data for a product matching one or more search criteria specified in the search query, the search results comprising one or more search results reflecting product data for a particular seller* (see page 5, paragraph 0038, lines 1-9 and page 7, paragraph 0073, lines 17-24 and page 27, paragraph 0260, lines 1-10).

First, Examiner notes presenting selected offers to a shopper by sending text and/or graphics in response to choices made by the shopper (page 5, paragraph 0038, lines 1-9) represents presentation information associated with the manner in which a plurality of search results are presented to the buyer, each search result comprising data for a product matching one or more search criteria specified in the search query, the search results comprising one or more search results reflecting product data for a particular seller. Examiner also notes that the vendors of Herz (i.e. sellers) make the offers (page 2, paragraph 0019, lines 15-17) and as such each of the offers is from a particular buyer (seller).

Next, Herz goes on to teach recording the presentation information. For example, page 7, paragraph 0073, lines 17-24 teaches textual attributes of an offer (i.e. presentation information associated with the manner in which a plurality of search results are presented to the buyer).

Further, in order for the system of Herz to know that a shopper has shown a past interest in offers for products with specific textual attributes, the system must record the textual attributes of the offer (i.e. must record the presentation information associated with the manner in which a plurality of search results are presented to the buyer).

Further, Examiner notes that clustering a shopper's query results into a virtual mall and then cross correlating shopper's purchasing response in relation to a products location (page 27, paragraph 0260, lines 1-10) represents the concept that the presentation information (a product's location) must be recorded in order to determine the shopping response for each location.

With respect to **claim 1**, Herz teaches *recording selection information associated with the selection by the buyer of a particular search result from among a plurality of search results, the particular search result comprising data for a particular product matching one or more search criteria specified in the search query, wherein the particular product is a product of a seller other than the particular seller* (see page 5, paragraph 0039, lines 1-6; page 27, paragraph 0260, lines 1-10; and, page 29, paragraph 278, regarding vendors "sharing data").

Examiner notes that monitoring a shopper's interests as he/she selects products and offers (page 5, paragraph 0039, lines 1-6), represents recording selection information associated with the selection by the buyer. Examiner notes that this monitoring by Herz is done after a user enters a search query (page 4, paragraph 0036) and is presented with search results (page 5, lines 0038). As such the selecting monitored by Herz includes the selection of a particular search result from among a plurality of search results, the particular search result comprising data for a particular product matching one or more search criteria specified in the search query.

Additionally, Examiner notes that clustering a shopper's query results into a virtual mall and then cross correlating shopper's purchasing response (i.e. selection by the buyer of a particular search result) in relation to a products location (page 27, paragraph 0260, lines 1-10) represents the concept that the selection of an item must be recorded in order to determine the shopping response (i.e. selection) for each location.

With respect to **claim 1**, Herz teaches *providing the recorded query information and at least one of the presentation information and the selection information to the particular seller to allow the particular seller to assess one or more aspects of its product data relative to product data of other sellers* (page 27, paragraph 0260 and 261, lines 1-10 and page 29, paragraph 0278).

Examiner starts by noting that the determination of better shelf space includes recording presentation and selection information, as described above (see page 27, paragraph 0260, lines 1-10). Thus providing a pricing structure for better shelf space to merchants represents providing at least some of the information to a seller to allow the seller to assess one or more aspects of its product data (shelf location) relative to product data (shelf space) of other sellers.

Further, Herz teaches vendors sharing their databases to enhance each others' databases of shopper profiles (page 29, paragraph 0278). Examiner notes, that while Herz's specific intention is to group shoppers, the sharing of databases among vendors would allow the vendors to asses the aspects (i.e. how shoppers react to the presentation) of their products relative to each other.

Examiner further notes the teachings of paragraph 261 which states “noting what prices, promotions, and layouts work well in general or for specific demographic groups.” Once again the note about layouts relates to Applicant’s “aspects of its product data relative to product data of other sellers.”

With respect to **claim 1**, Examiner notes that the architecture of the system of Herz is taught on page 3, paragraphs 0021 and Figure 1. In particular the architecture includes processing units that execute program instructions store in memory units.

With respect to **claim 2**, Herz teaches *wherein the one or more databases comprise a shared product data repository containing product data for a plurality of products available from a plurality of sellers* (page 3, paragraph 022, lines 8-14 and page 27, paragraph 0260 and page 34, paragraph 0315, line 17).

Examiner notes that Herz’s offer database represents a shared product data repository (page 3, paragraph 022, lines 8-14). Further Examiner notes that Herz teaches the custom construction of the invention of a custom electronic shopping mall layout (page 27, paragraph 0260 and page 34, paragraph 0315, line 17). Examiner notes that a shopping mall construction would include that the database include a plurality of offers (products) available from a plurality of sellers.

With respect to **claim 3**, Herz teaches *wherein the server is operable to provide information to the particular seller by communicating the information to the particular seller substantially immediately following the selection of the particular search result by the buyer* (page 5, paragraph 0039). Examiner notes Herz teaches as the user considers and selects



products, the system monitors the shopper and updates a user's demand summary. In other word, the system updates a user profile in real time as the user interacts with the system. Thus the information is accessible by the seller (communicated to the seller) substantially immediately following the selection by the buyer.

With respect to **claim 4**, Herz teaches *wherein the server is further operable to record contract information reflecting one or more terms of a contract between a buyer and a seller following the selection of the particular search result by the buyer, the particular search result reflecting product data of the seller* (page 2, paragraph 0019, lines 1-15).

Examiner notes that Herz defines offer as the contractual terms of an offer that one party might make to another. Therefore, as Examiner has illustrated that Herz teaches the recording of offer presentation and offer selection and since an offer represents contract information reflecting the terms of a contract between a buyer and a seller, then Examiner has proved that Herz teaches recording contract information reflecting the terms of a contract between a buyer and a seller.

With respect to **claim 5**, Herz teaches *wherein the query information reflects one or more product attribute values and one or more seller attribute values specified in the search query* (see page 4, paragraph 0036 and page 26, paragraph 0258, lines 76-92).

Examiner notes that "dress shirts" (page 4, paragraph 0036) represents a product attribute value. Further, Examiner notes that query terms can also indicate a seller attribute value, like the name of the seller, (e.g. Lloyd's indicating, Lloyd's of London) (page 26, paragraph 0258, lines 76-92).

With respect to **claim 6**, Herz teaches *wherein the presentation information reflects a position of a search result for the particular seller within an ordered display of the search results; and the selection information reflects a position of the selected search result within the ordered display of the search results* (see page 27, paragraph 0260, lines 1-10).

Examiner once again notes that that clustering a shopper's query results into a virtual mall and then cross correlating shopper's purchasing response in relation to a products location (page 27, paragraph 0260, lines 1-10) represents the concept that the presentation information (a product's location) and selection information (purchasing response) must be recorded in order to determine the relative purchase rates for each location.

With respect to **claim 7**, Herz teaches *wherein the presentation information reflects one or more buyer-specified sort criteria used to sort the search results, each sort criterion selected from the group consisting of a product attribute, a product attribute value, a seller attribute and a seller attribute value* (see page 4, paragraph 0036 and page 26, paragraph 0258, lines 76-92).

Examiner notes Herz teaches the buyer progressively narrowing a search using a keyword such as "dress shirts" (product attribute) would be reflected in the presentation information.

With respect to **claim 8**, Herz teaches *wherein the selection information reflects at least one of: the number of search results considered by the buyer; and whether the buyer considered one or more search results for a particular seller* (see page 5, paragraph 0039, lines 1-6).

Examiner notes that "as the shopper considers and selects products and offers the system monitors the shoppers interested in various offers" represents whether the buyer considered one

or more search results for a particular seller. Further Examiner notes that Herz need only meet this one criteria to anticipated claim 8, as claim 8 states "at least one of".

With respect to **claim 9**, Herz teaches *wherein the selection information reflects at least one of: one or more product attribute values or seller attribute values for one or more search results for the particular seller considered but not selected by the buyer; and one or more product attribute values or seller attribute values for the search result selected by the buyer* (see page 5, paragraph 0039, lines 1-6 and page 26, paragraph 0259, lines 1-20).

Examiner notes that combination of monitoring a shopper as he/she considers and selects offers (page 5, paragraph 0039, lines 1-6 ) and determining an association between an offer and the query terms used to find that offer (page 26, paragraph 0259, lines 1-20) represents recording selection information that reflects a product attribute for an offer both considered and selected by the shopper (buyer).

With respect to **claim 10**, Herz teaches *wherein the selection information excludes product attribute values and seller attribute values for the search result selected by the buyer that are to be kept in confidence from sellers other than the seller associated with the selected search result* (see page 29, paragraph 0278).

Herz teaches vendors sharing their databases to enhance each others' databases of shopper profiles (page 29, paragraph 0278). Examiner notes that this represents each vendor has information for himself or herself. In other words, the vendors are excluded from information related to selections unless they were the selected vendor.

With respect to **claim 11**, Herz teaches, *wherein the selection information reflects at least one of: a position of the selected search result within the plurality of search results presented to the buyer; and one or more reasons for the position, relative to the search result selected by the buyer of a search result for a particular seller* (see page 27, paragraph 0260, lines 1-10).

Examiner notes that determining the relative purchase rate for a product at different locations includes a position of the selected search result within the plurality of search results presented to the buyer. Further Examiner notes that Herz need only teach one of these limitation to anticipate claim 11, since claim 11 recites “wherein the selection information reflects at least one of.”

Examiner notes that claims 12-35 are rejected similar to claims 1-11. Reference the table below for a breakdown of how each of claims 12-35 relates to one of claims 1-11.

Claim 1	Claim 12	Claim 23	Claim 34	Claim 35
Claim 2	Claim 13	Claim 24		
Claim 3	Claim 14	Claim 25		
Claim 4	Claim 15	Claim 26		
Claim 5	Claim 16	Claim 27		Claim 35
Claim 6	Claim 17	Claim 28		Claim 35
Claim 7	Claim 18	Claim 29		
Claim 8	Claim 19	Claim 30		Claim 35
Claim 9	Claim 20	Claim 31		Claim 35
Claim 10	Claim 21	Claim 32		
Claim 11	Claim 22	Claim 33		

*Response to Arguments*

7. Applicant's arguments filed December 29, 2006 have been fully considered but they are not deemed persuasive.

8. Regarding the argument that Herz et al. fail to disclose allowing the sellers to access the data of other sellers' products, Herz et al. indeed disclose allowing the sellers to access the data of other sellers' products. See, for example, ¶ 278, entitled "Sharing Sales Force Automation Data among Vendors."

9. Applicant asserts that Herz fails to teach providing recorded query information and at least one of presentation information and the selected information to a particular seller to allow the seller to assess aspect(s) of its product data relative to product data of other sellers. Upon careful consideration, Examiner respectfully disagrees with this assertion.

As pointed out above in the rejection of the claims under 35 USC 102 Herz teaches recording query information, recording presentation information and recording selection information. Further the purpose of recording this information is to provide it to sellers. The specific embodiment of Herz uses this information to provide offers to a user. However, Examiner takes the position that Applicant's claimed function (i.e. "to allow the seller to assess aspect(s) of its product data relative to product data of other sellers") is an inherent result of providing the specific data. Since Herz provides the specific data, Herz inherently allows the seller to assess aspect(s) of its product data relative to product data of other sellers.

10. Applicant asserts that the goals of Herz differ from that of the present invention. Specifically, "the Herz system is concerned with optimizing offers from a single vendor to a particular shopper while the present invention is concerned with providing a seller information on how the seller can adjust the seller's offer so as to attract a shopper to the seller's offer rather than to the offer of a competing seller." Examiner respectfully objects to Applicant's broad characterization of the Herz reference and notes that Herz teaching of layout information clearly represents the teaching a vendor's product in relation to its placement relative to other vendor's products. (see for example paragraphs 260 and 261).

11. Applicant further asserts that "knowing 'how shoppers react to the presentation' simply does not anticipate allowing 'the particular seller to assess one or more aspects of its product data relative to product data of other sellers' as required by clam 1." Examiner respectfully disagrees. It is the continued position of the Examiner that knowing how a shopper reacts to a presentation is clearly one aspect of product data relative to product data of other sellers. In other words, how a product is presented is clearly product data and therefore knowing how one product is presented versus how a competitor's product is presented is clearly assessing aspects of product data relative to product data of other sellers.

*Conclusion*

12. The prior art made of record and not relied upon is considered pertinent to the disclosure.

13. All rejected claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

14. Any inquiry concerning this communication, or earlier communications, should be directed to the examiner, **Jerry O'Connor**, whose telephone number is **(571) 272-6787**, and whose facsimile number is **(571) 273-6787**.

Official replies to this Office action may now be submitted electronically by registered users of the EFS-Web system. Information on EFS-Web tools is available on the Internet at: <http://www.uspto.gov/ebs/portal/tools.htm>. An EFS-Web Quick-Start Guide is available at: <http://www.uspto.gov/ebs/portal/efs/quick-start.pdf>.

Alternatively, official replies to this Office action may still be submitted by any *one* of fax, mail, or hand delivery. **Faxed replies should be directed to the central fax at (571) 273-8300.** Mailed replies should be addressed to "Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450." Hand delivered replies should be delivered to the "Customer Service Window, Randolph Building, 401 Dulany Street, Alexandria, VA 22314."

GJOC

March 16, 2007



Gerald J. O'Connor  
Primary Examiner  
Group Art Unit 3627